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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,142	11/03/2003	Gary E. Jenkins	JENK / 02A	3727
26875	7590	02/03/2006	EXAMINER	
WOOD, HERRON & EVANS, LLP			CHAN, SING P	
2700 CAREW TOWER			ART UNIT	
441 VINE STREET			PAPER NUMBER	
CINCINNATI, OH 45202			1734	

DATE MAILED: 02/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/700,142	Applicant(s) JENKINS ET AL.	
	Examiner Sing P. Chan	Art Unit 1734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 19-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 8, 10-15, and 17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Franklin et al (U.S. 5,865,918).

Regarding claims 1-6 and 10-15, Franklin et al discloses an apparatus for labeling articles. The apparatus includes a flapper arm arrangement for carrying and rotating a label on the applicator onto the conveyed articles (Col 11, lines 53-65), a printer for printing a label for the applicator (Col 8, lines 7-20), and a programmable controller such as a microprocessor, which is configured to receive any data for programming purposes, for controlling the operation of the apparatus (Col 10, lines 28-39), which by controlling the timing between the pickup point of the label to the conveyed article (Col 5, lines 43-46) the position of the label on the article is variably defined on the article independent to the size of the article. In any event, one of ordinary skill in the art would appreciate reading Franklin et al that the position of the label can be variably defined by varying the timing of the application of the label from the printer to the article to allow application of the labels with different indicia to the same surface of the article or to a different planes on the article.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a varying time on the programmable controller to allow the application of the labels to various different position on an article in the apparatus of Franklin et al to allow easy application of labels with different indicia to the same surface of the article or to a different planes on the article.

Regarding claims 8 and 17, Franklin et al discloses the applicator is mounted on a pneumatically controlled actuator rack and pinion, which is a carriage assembly. (Col 12, lines 23-33)

3. Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al (U.S. 5,865,918) as applied to claims 6 and 15 above, and further in view of Carpenter et al (U.S. 5,232,539).

Franklin et al as disclosed above is silent as to the printer is mounted on the carriage assembly. However, mounting the label printer on the carriage assembly is well known and conventional as shown for example by Carpenter et al. Carpenter et al discloses an apparatus for label object. The apparatus includes a movable printer on the carriage assembly for movement to proper height and for applying the label. (Col 3, lines 45-54)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a movable printer on the carriage assembly for movement to proper height or position as disclosed by Carpenter et al in the apparatus of Franklin et al to reduce the time between the application of labels. (See Carpenter et al, Col 1, lines 44-50)

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4. Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al (U.S. 5,865,918) as applied to claims 8 and 17 above, and further in view of Schwenke et al (U.S. 5,940,293).

Franklin et al as discloses the slides with pinion. (Col 14, lines 24-26 and Figure 21) Franklin also shows in Figure 21, a motor is operatively connected to the pinion. In any event, operatively connects a motor to a pinion on a slide is well known and conventional as shown for example by Schwenke et al. Schwenke et al discloses an industrial controller for bar chart editing. The apparatus includes moving the components with induction motors, hydraulic, or pneumatic cylinders, which are all equivalents. (Col 7, lines 10-23)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide motor, hydraulic, or pneumatic cylinders operatively connected to pinion on a slide as disclosed by Schwenke et al in the apparatus of Franklin et al, which are all equivalents.

Response to Amendment

5. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Response to Arguments

6. Applicant's arguments filed January 18, 2006 have been fully considered but they are not persuasive.

7. In response to applicant's argument that Franklin et al controller does not suggest or teach varying a position of a label on a package. The examiner disagreed,

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the changing of the timing on the speed of the application of the label to the package would vary the position of the label on the package if the speed of the package being conveyed is maintained at a constant speed.

8. In response to applicant's argument that Franklin et al does not suggest or teach a programmable control that is configured to receive data. The examiner disagreed, since Franklin et al discloses the controller includes a microprocessor, which is a computer and therefore programmable by manually inputting data and instruction for the operation of the apparatus, therefore the controller is configured to receive data such as predetermined label position for controlling the rotary label applicator.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sing P. Chan whose telephone number is 571-272-1225. The examiner can normally be reached on Monday-Thursday 7:30AM-11:00AM and 12:00PM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher A. Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chan Singh B

SPC

CA-Full

CHRIS FIORILLA
SUPERVISORY PATENT EXAMINER

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